

II. Background

As is well known, the Eastern Interconnection experienced a major outage on August 14 that resulted in the loss of 61,800 MW of load across multiple control areas. More than a third of the load loss occurred in New York State, and New York City suffered a sustained blackout. The NYISO-administered electricity markets were disrupted between approximately 4:10 P.M. on August 14, when the outage began, and 12:01 A.M. on August 18, when normal market operations were fully restored.

During this four-day “outage period,” the NYISO continued to receive bids to sell and to purchase energy. It was able to produce day-ahead prices that appear to reasonably reflect the interplay of competitive market forces,² although it has not yet been possible to confirm that all prices were valid. By contrast, the NYISO was unable to calculate advisory hour-ahead prices, or real-time settlement prices, in the normal manner because there was not enough data for its hour-ahead and real-time market software to function properly. Hourly and real-time prices were posted, but it appears likely that a substantial portion of them do not reflect competitive market forces. This is the case even for the latter portion of the outage period when normal electric service was restored but the NYISO was still completing its restoration plan and testing restored systems.

The TEPs authorize the NYISO to take corrective action in response to “Emergency System Conditions,” which include situations in which “widespread electric transmission or generation equipment outages prevent the ISO from dispatching the system in accordance with

² Day-ahead prices for August 14 were computed by 11 A.M. August 13. Day-ahead prices for August 15 were computed by 11 A.M. on August 14, well before the outage event began. It appears that a sufficient number of day-ahead bids were received on August 15 and 16 to produce potentially valid day-ahead prices for August 16 and 17 as well.

the Market Rules.”³ Emergency System Conditions plainly existed throughout the outage period, during which the NYISO dispatched generators pursuant to its system restoration plan and without reference to economics.

When the TEPs apply, the NYISO is empowered to “recalculate [Locational-Based Marginal Prices (“LBMPs”)] or other prices or payments in a manner that reflects, as closely as reasonably practicable, the LBMPs or other prices or payments that would have resulted but for the . . . Emergency System Condition and shall substitute the recalculated LBMPs or other prices or payments for the prices that resulted from . . . [the] Emergency System Condition.”⁴ The NYISO is committed to fulfilling this responsibility in a way that treats all market participants fairly.

The TEPs require the NYISO to post a notice that it is considering price recalculations no later than 5 P.M. on the day after the day in which a price correction would be needed.⁵ The NYISO has complied with this obligation with respect to hourly and real-time prices by notifying its stakeholders that it is reviewing all such prices for every hour from 4 P.M. August 14 until 12 AM August 18. As is noted below, however, the NYISO is seeking a waiver of this requirement with respect to day-ahead prices for the August 14 and 15 markets.

The TEPs also require that the NYISO correct prices no later than five calendar days after posting a notice of possible price corrections.⁶ The deadline for correcting August 14 prices is thus August 20. The NYISO is seeking a waiver of this deadline so that it will have sufficient

³ TEPs § A.

⁴ TEPs at § C.3.

⁵ TEPs at § C.2.

⁶ *Id.*

time to verify the validity of prices posted during the outage period, and to develop an appropriate method for recalculating invalid prices.

III. Emergency Request for Waiver of the TEPs' Five-Day Correction Deadline

The NYISO must resolve a number of complex technical, economic, and fairness issues before recalculating invalid prices that were posted during the outage period. Many of the issues are unprecedented since the NYISO's real-time market software has never before been effectively disabled for so long. The NYISO has been considering these issues for several days and has been working diligently to find solutions. Nevertheless, it has become apparent that the NYISO will need more than five days to carefully review all of the relevant factors and to develop a method for computing prices as close as "reasonably practicable" to what prices would have been but for the outage. Because the NYISO's decisions may have significant financial implications for all market participants it is appropriate to allow a reasonable amount of additional time to ensure that prices are recalculated properly.

In addition, the NYISO believes that it will make better informed decisions if it has an opportunity to consult with its stakeholders.⁷ This is not practical within the five days normally allowed by the TEPs. If, however, the NYISO is given the extra time it seeks, it will be able to follow through on a stakeholder consultation initiative that is already underway.⁸ Allowing

⁷ Stakeholder consultations are consistent with the spirit of the TEPs, which suggest that the NYISO should address Emergency System Conditions in "consultation and cooperation with Market Participants" when time permits.

⁸ The NYISO held a special teleconference of its Scheduling and Pricing Working Group on the morning of August 18 to introduce its price recalculation plans and to request stakeholder comments. Stakeholders will have until August 20 to provide preliminary input. The NYISO will unveil a price recalculation proposal on August 25 and discuss it at a working group meeting on August 26. Stakeholders will then have another opportunity to comment before the NYISO implements its final decision.

stakeholders to provide input is also likely to minimize controversies once the NYISO makes its recalculation decision.

Given the extraordinary circumstances associated with the outage, and the harm to the market that would result from allowing as many as four-days of invalid prices to stand, the NYISO requests that the Commission exercise its discretion⁹ to waive the TEPs' five-day price correction deadline. The Commission should instead allow the NYISO until September 7 to recalculate invalid day-ahead, hour-ahead,¹⁰ and real-time outage period prices, including, but not limited to, energy and ancillary services prices. September 7 is the date that the NYISO is scheduled to pay sellers and bill buyers for August transactions in the NYISO-administered markets. Granting the requested waiver would give the NYISO enough time to address the issues and to adopt the best possible price recalculation methodology.

IV. Emergency Request for Waiver of the TEPs' Twenty Four Hour Notice Period

Initially, the NYISO believed that all of the day-ahead prices for August 14 and 15 had been correctly calculated and therefore did not post a notice of its intent to reconsider them within the normal twenty four hour deadline established by the TEPs. Subsequently, it became apparent that this decision may not have been based on complete information. The oversight occurred in part because the NYISO staff was more focused on restoring service than on reviewing prices, and in part because the price correction issues posed by the outage have proven

⁹ The Commission has previously waived TEP provisions when circumstances, including equitable considerations, warranted. *See H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc*, 97 FERC ¶ 61,218 at 61,694 (2001); *reh'g denied*, 100 FERC ¶ 61,028 (2002). *See also Wisvest-Connecticut, LLC v. ISO New England Inc.*, 101 FERC ¶ 61,372 (2002).

¹⁰ Although hour-ahead prices are normally advisory they serve as the basis for external transaction settlements under certain, relatively unusual, circumstances. The NYISO has therefore included these prices in its waiver request.

to be different in scope and character from those the NYISO ordinarily faces. Given the extraordinary circumstances involved, the Commission should exercise its discretion to waive the TEPs twenty four hour notice deadline for those two days only. It should also specify that the NYISO may reserve day-ahead prices for those days for further review if it acts within twenty four hours of the issuance of an order granting the requested waiver.

V. Emergency Request for Expedited Commission Action

Finally, the NYISO respectfully asks that the Commission take expedited action and grant the requested waivers no later than August 20, 2003. Prompt action is needed to avoid uncertainty and to confirm that the NYISO will have the time it needs before the TEPs' five-day deadline expires. Granting this request will not prejudice stakeholders because they have already been informed of the NYISO's plan to seek the waivers requested herein. Stakeholders will also have ample opportunity to comment on price recalculation issues during the extension period.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person that has executed a Service Agreement under the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff, and upon the New York State Public Service Commission, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 2010 (2003).

Dated at Washington, D.C. this 18th day of August, 2003.

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